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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE

SANTA CLARITA VALLEY WATER AGENCY,)
)
 PLAINTIFF,) CASE NO.
)
 vs.) CV 18-06825-SB
)
 WHITTAKER CORPORATION, et al.,) VOLUME 6
) PAGES 618 TO 687
 DEFENDANTS.)
)
 _____)

REPORTER'S TRANSCRIPT OF
TRIAL DAY 3
FRIDAY, NOVEMBER 19, 2021
1:07 P.M.
LOS ANGELES, CALIFORNIA

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1 **FRIDAY, NOVEMBER 19, 2021; 1:07 P.M.**

2 **LOS ANGELES, CALIFORNIA**

3 **-oOo-**

4
5 (The following proceedings were held in
6 open court in the presence of the jury:)

7 THE COURT: We are back on the record in
8 Santa Clarita Valley Water Agency versus Whittaker Corporation
9 with all present who were present before the break including
10 Dr. Hughto who is on the witness stand still under oath.

11 Do you understand that, sir?

12 THE WITNESS: I do.

13 THE COURT: We are in cross-examination.

14 Mr. Blum, you may continue whenever you're ready.

15 **RICHARD HUGHTO, PH.D.,**

16 **CALLED BY THE PLAINTIFF, WAS PREVIOUSLY SWORN.**

17 **CROSS-EXAMINATION (RESUMED)**

18 BY MR. BLUM:

19 Q Mr. Hughto, are you ready to go?

20 A I'm ready.

21 Q Doctor, I want to back up a little bit on some
22 just general issues.

23 In the work you've done in the past, you have
24 worked on other perchlorate sites; correct?

25 A I have worked on other perchlorate sites over the

1 years.

2 Q And at least one of them, the perchlorate at the
3 site was at least all or partially the result of the
4 manufacturing of fireworks; correct?

01:07PM

5 A It was a location called the fireworks site. My
6 recollection -- it's been a while since I looked at the
7 records, but my recollection is it was -- I don't know for sure
8 that maybe some small percentage was other types of
9 manufacturing. But it was primarily the fireworks site.

01:08PM

10 Q The accelerant that shoots the fireworks in the
11 air is perchlorate; right?

12 A It's an ingredient in the propellant.

13 Q You have also worked at perchlorate sites which
14 resulted from blasting manufacturing of explosives for oil
15 fields?

01:08PM

16 A It wasn't for an oil field. It was -- it was
17 blasting rock during the construction of a highway.

18 Q Okay. Now, in terms of -- you've also worked on
19 sites that had volatile organic compounds in it; correct?

01:08PM

20 A Yes, I have.

21 Q And the sources of these VOCs have been various;
22 correct?

23 A I have seen many different types of sources of
24 VOCs over the years.

01:08PM

25 Q One of them -- one of the sources you've seen are

1 degreasers; correct?

2 A I've seen sources from degreasers and many
3 different types of releases from degreasers.

01:09PM

4 Q Generally, how are degreasers a source of VOC
5 contamination?

01:09PM

6 A It's the degreaser operation as a whole that
7 could become a source. First you have the solvent brought into
8 the facility and stored before it even gets to the degreaser.
9 There could be mishandling or releases during those processes.
10 There could be releases during the loading of the chemical, the
11 degreasing solvent into the degreasing machine.

01:09PM

12 There could be releases during the course of the
13 operation of the machine like I described for the extruding
14 site that I worked on where the vapors were not all captured
15 and escaped the machine and the solvent condensed and went into
16 the ground. There could be leaks from pipes. There could be
17 overfills of reservoirs.

01:09PM

18 There could be releases when the -- when the
19 vaporized degreasing solvent is recondensed to be reused, it
20 has some water in it. Some degreasing units have water separators
21 to separate the water from the solvent so you can reuse the
22 solvent. So there could be releases as a result of that
23 operation. There could be -- there's disposal of the sludge
24 that I have described earlier. There's disposal of the water
01:10PM 25 from the separation process that -- and there are more. A lot

1 of ways a degreasing operation can lead to release in the
2 environment.

01:10PM

3 Q Is there any document that you've seen that shows
4 that Whittaker in particular disposed of any sludge from the
5 degreaser onsite?

01:10PM

6 A I looked -- that was something I specifically
7 looked for actually looking through the documents is some
8 mention of the -- of the degreasing sludge, and the reason I
9 was looking for it is those very high concentrations I talked
10 about in the burn area earlier today. It looked like the
11 sludge could have been the source of that. But I've seen no
12 documentation of where the sludge from the degreasers went.

01:11PM

13 Q And the source --

14 A Whether it was manifested onsite, managed onsite,
15 burned onsite, what was done with it I don't know.

01:11PM

16 Q And the source in the Burn Valley could have been
17 something other than sludge; correct?

18 A There could have been other things. They could
19 have dumped barrels of waste solvent or not waste solvent as
20 pure solvent -- that could have resulted in that kind of a
21 concentration.

22 Q But these are all guesses because you really
23 don't know what the source is; correct?

01:11PM

24 A Because there's no documentation of the different
25 potential sources than -- those are just hypothetical types of

1 situations that could have led to the situation that was
2 documented in the data.

3 Q But to be fair, you're not saying there's no
4 documentation. You're saying you've seen no documentation?

01:11PM 5 A I'm saying that I have not seen documentation
6 what happened with that sludge.

7 Q All right. What's a water separator as it
8 relates to a degreaser?

9 A Water separator is a -- I started to describe it
01:11PM 10 as -- as it relates to a degreaser, when the solvent is
11 vaporized in a vapor degreaser, it's -- it becomes a vapor
12 which is air. And then, in order to be able to reuse it, it's
13 condensed, brought back into a liquid form. There would be
14 some water because the air -- because when the -- when it
01:12PM 15 becomes a vapor in the air, it mixes with the air, and there's
16 a lot of water in the air. So it becomes a mixture of the
17 solvent and water that gets condensed.

18 The idea of separating is, like I said earlier,
19 to recover the solvent to reuse it and get the water out of it
01:12PM 20 because water is a bad degreaser.

21 Q Is it also --

22 A So it's to remove the -- it's to separate the
23 water from the solvent to be able to reuse the solvent.

24 Q And the water then is put down the sewer system
01:12PM 25 or at least it was in the past?

1 A There are situations where it goes into a sewer
2 system, and then there are other methods of handling.

3 Q Is one of the reasons why you want to separate
4 the water from the solvent is because TCE is expensive and you
01:13PM 5 don't want to waste it?

6 A That would be a reason for recovering it. Like I
7 said, water is a lousy -- a lousy solvent. So -- for
8 degreasing purposes anyway. So you want to have the degreasing
9 solvent be as pure a solution as you can so it -- so that you
01:13PM 10 might be able to reuse it, and cost is a consideration.

11 Q Now, you also have experience in dealing with
12 VOCs at sites in which the VOCs were caused by leaks from dry
13 cleaners; correct?

14 A Releases of dry cleaning facilities, yes.

01:13PM 15 Q That's very -- it's not a rare instance in
16 today's environmental community finding VOCs connected with dry
17 cleaners; is it?

18 A It is not unusual if you're studying a dry
19 cleaner or former dry cleaning location to find that there had
01:13PM 20 been VOC releases.

21 Q Is it also because the dry cleaning units
22 sometimes use water separators?

23 A If it's the whole process that was involved.
24 Separators are a component, are one type of release. But the
01:14PM 25 releases I just discussed for vapor degreasers, many of those

1 would also apply as potential sources from a dry cleaning
2 operation.

3 Q All right. Now, I want to -- okay. Let's move
4 back to where we ended. If we could put up Exhibit 203,
01:14PM 5 please, which is the procedure manual, specifically page 5 or
6 .5.

7 (Marked for identification and received
8 into evidence Exhibit No. 203.)

9 Q BY MR. BLUM: Now, the area we talked about deals
01:14PM 10 with how things were to be burned at the site; correct?

11 A Okay. The title of the section is "Destruction
12 by burning."

13 Q Now, did you review any documents that described
14 the different alternatives that Whittaker might have had for
01:15PM 15 destruction of perchlorate mandated by the Government?

16 A I did.

17 Q Was -- was Whittaker able to simply send the
18 perchlorate to an offsite disposal facility?

19 A If we're thinking about the same alternative,
01:15PM 20 there was an alternative for ocean dumping which was no longer
21 allowed. There was an option for offsite shipping and an
22 option for burning on the site. There may have been a fourth,
23 but those are the ones I recall.

24 Q The offsite shipping was to specified locations;
01:15PM 25 correct?

1 A Well, they would have to be the permitted
2 facilities like we had discussed earlier. If you're going to
3 ship a waste somewhere, that that location has to have a permit
4 and accept that waste.

01:15PM

5 Q So in your opinion, the contracts allowed
6 Whittaker to send the perchlorate waste to any hazardous waste
7 disposal facility?

8 A Now you're changing the question to a contract?

01:16PM

9 Q Well, under the contract with the Department of
10 Defense, was Whittaker able to send waste perchlorate to any
11 facility that was permitted to accept hazardous waste?

12 MR. RICHARD: Objection. Lacks foundation.

13 THE COURT: Sustained.

01:16PM

14 Q BY MR. BLUM: Do you know whether or not
15 Whittaker was able to send perchlorate waste to any facility so
16 long as it was permitted to receive the waste?

17 A Allowed by whom?

18 Q By the contract with the Department of Defense.

19 A First of all, I have not seen defense contracts.

01:16PM

20 THE COURT: All right. You've answered the
21 question.

22 Q BY MR. BLUM: All right. Did you read any
23 documents of people who had seen contracts?

24 A I believe I have.

01:17PM

25 Q Isn't one of them both a declaration and a report

1 by somebody called Robert Zoch?

2 A I have seen Mr. Zoch's report and declaration.

3 Q And his report is something that you at least
4 considered in this case; correct?

01:17PM

5 A I did consider his report.

6 Q All right. Now, the procedures that are outlined
7 in the page that's up, which is 203.5, for the burning of waste
8 such as perchlorate, were those actually followed?

9 A Is it -- when you say 203.5 is that -- I see.

01:17PM

10 It's blown up on the screen?

11 Q Correct.

12 A Is this the entire section that's blown up?

13 Q Well, why don't we go through the -- we'll just
14 show the next two pages. Keep going.

01:18PM

15 Sitting here right now, do you have an opinion as
16 to whether or not the procedures in the manual were followed
17 for burning?

18 A I'd have to read them and consider what I know
19 about the burning operation.

01:18PM

20 Q All right. You know what, let's go on then. I
21 don't want to waste the time.

22 What did Mr. Zoch say about the procedures that
23 were followed?

24 A The procedures that were followed for burning?

01:18PM

25 Q For burning, yes.

1 A I don't recall that detail from his report.

2 Q All right. If we can go to his -- if you take a
3 look at Exhibit 420 that's in front of you, and it's not to be
4 published --

01:18PM 5 (Marked for identification Exhibit No. 420.)

6 THE WITNESS: 420.

7 Q BY MR. BLUM: 420, yes.

8 A I have four binders that you have provided. One
9 of them the first is 422, I think. One of them just says 411
01:19PM 10 and 412. One that has a series that's all in the 1300 series.

11 MR. BLUM: Your Honor, may my paralegal show him
12 where it is?

13 THE COURT: Yes. Do you have an extra copy of
14 420?

01:20PM 15 MR. BLUM: I will move on to something else and
16 come back while you find it.

17 THE COURT: That's fine.

18 Q BY MR. BLUM: All right. Let's talk about TCE.

19 Now, is it true, Dr. Hughto, that in the late
01:20PM 20 1960s Whittaker switched from the use of TCE to TCA?

21 A Actually, I do not believe that is so.

22 Q Isn't that --

23 A By the way, you're talking about at the Bermite
24 facility?

01:20PM 25 Q Yes.

1 A Okay.

2 Q Isn't that what you said in your report?

3 A I do not believe I said that in my report.

4 Q Okay. How about in your -- why don't we go to

01:20PM 5 your deposition, page 83, line 7, through 84, line 8.

6 MR. RICHARD: Just a moment, please. That's

7 fine.

8 THE WITNESS: There's nothing on the screen.

9 MR. BLUM: We're putting it now.

01:21PM 10 THE WITNESS: Okay.

11 MR. BLUM: It should be on the screen right now.

12 All right. Here we are.

13 Q Sir, do you see that?

14 A I do see that.

01:22PM 15 Q Didn't you testify on the date of your depo:

16 "Question: On page 4 of the report,

17 it says, Whittaker initially changed from

18 TCE use to 1,1,1-trichloroethylene in the

19 late 1960s. What kind of uses are -- is

01:23PM 20 TCE used for -- or what is TCE used for

21 generally?

22 "You said what is it used for today?

23 "Yeah. What's it used for today?

24 Sure. Let's go with that.

01:23PM 25 "Answer: Not much.

1 "Question: Okay. And why is that?

2 "Answer: It is -- I don't know if

3 it's officially banned, but it fell into

4 the disfavor because of the toxicity

01:23PM 5 relative to some of the alternative chemicals.

6 "And in the -- in the -- in time --

7 19 -- sorry. Were you done?

8 "Not quite. The switch in the late

9 1960s, in my experience, was brought over

01:23PM 10 many industries that, at that time the

11 federal government and state governments

12 were concerned with the toxicity of TCE

13 and finding it in the environment and

14 encouraged industries or users who were

01:24PM 15 using TCE to look at alternatives."

16 Was that your testimony?

17 A That's what it says here on the transcript.

18 Q All right. Now, can you go to your report which
19 is Exhibit 1305 at page 4.

01:24PM 20 Are you on page 4?

21 A I'm on page 4, yes.

22 Q Can you read the first sentence on page 4?

23 A The first sentence on page 4 begins on page 3.

24 Q All right.

01:24PM 25 A Is that the sentence you're talking about?

1 Q Yeah.

2 A It reads, "Acton Mickelson," in parens, "1/1997
3 reported that Whittaker initially changed from TCE use to
4 1,1,1-trichloroethylene," in parens, "TCA in the late 1960s,
01:25PM 5 while PCE was reported to continue to be used into the 1970s."

6 Q That's all.

7 Did you in any way say that you disagreed with
8 that statement?

9 A When?

01:25PM 10 Q Anywhere in your report.

11 A I did not say that in the report.

12 Q But are you disagreeing with it now?

13 A I have looked for this document since I prepared
14 this report. I disagree with that statement based on looking
01:25PM 15 at other documents that I had looked at prior to that and I
16 looked at subsequently.

17 Q When you say subsequently, do you mean subsequent
18 to your deposition?

19 A Yes. I looked at documents subsequent to my
01:25PM 20 deposition, but they were documents -- the timing was
21 subsequent, but I had looked at documents earlier.

22 Q So do you recall specifically at your deposition
23 being asked under oath whether you have agreed with that
24 statement in your report?

01:26PM 25 A Are you talking about the part you just read?

1 Q No. A different part.

2 A I will have to see the transcript.

3 Q This will be page 98, lines 2 through 19.

01:26PM 4 MR. RICHARD: We would object, Your Honor, there
5 hasn't been a foundation for a contradiction under the rules of
6 evidence.

7 THE COURT: The objection is sustained. The
8 Court doesn't find it as being impeachable.

9 Q BY MR. BLUM: When was TCA started?

01:27PM 10 A What do you mean TCA started?

11 Q When did -- was TCA ever used at the site?

12 A I believe it was.

13 Q When did they start?

01:27PM 14 A I believe TCA was -- they began to use TCA
15 sometime in the 1980s.

16 Q Can you tell me the document that was on your
17 list that you relied upon to reach that conclusion?

01:27PM 18 A There are -- I tried to recall, anticipating a
19 question, I'm trying to recall which specific document. It
20 refers to a request, I believe, for a waiver as part of one of
21 the DOD contracts to use TCA in place of PCE which was being
22 used prior to that time.

23 Q Right.

01:28PM 24 When do you have any -- what document did you
25 refer to -- let me ask it differently.

1 When did they stop using TCE at the site?

2 A My understanding is that TCE was -- there was a
3 changeover to PCE as -- because of what was specified in a
4 proposal related to some manufacturing product, I believe, in
01:28PM 5 the mid 1970s. That would -- that would help define the
6 beginning of the PCE period. I'm not saying there is no
7 overlap where TCA was used and PCE wasn't in the facility at
8 the same time, but the PCE was introduced beginning in the
9 1970s.

01:28PM 10 Q And you've -- you had -- prior to your deposition
11 or your report, had you reviewed this document?

12 A Yes.

13 Q You just missed it? That part?

14 A Missed what?

01:29PM 15 Q In your deposition the prior time and in your
16 report, you don't talk about that. Did you just miss it when
17 you were reading it before the deposition or the report?

18 A Well, I did -- I did read it. I knew it was
19 there. I knew what it said. I did not write that down in the
01:29PM 20 report, but I reviewed tens of thousands of pages of stuff and
21 hundreds of documents that I didn't put into a 30-page report
22 either. So it -- it did not make it into the report.

23 Q Now, Dr. Hughto, you said you were aware or you
24 suspected that I was going to discuss this with you so you
01:29PM 25 tried to review the materials.

1 A I'm sorry. I misled you then. You asked one
2 question, and when I said I was anticipating, I meant I was
3 anticipating the next question. This wasn't a different day.

01:30PM

4 Q Why did you go back and review the history of TCA
5 versus TCE use?

01:30PM

6 A I didn't specifically go back to review that. It
7 was just something as I was rereading documents and looking
8 at -- I don't recall the purpose I picked up any of the
9 particular documents. But then it -- then I will call it
10 pieces of the puzzle started to come together for me defining
11 this time period.

12 Q Did counsel for the plaintiff inform you that the
13 defendants were arguing that the contamination couldn't be ours
14 because we didn't use TCE?

01:30PM

15 A Could you repeat it, please?

16 Q Did counsel for the plaintiffs in any way, shape,
17 or form inform you of words to the effect that the defendants
18 were arguing or stating that the contamination in the wells
19 couldn't be theirs because we did not use TCE?

01:31PM

20 A I need a little help on the details. You said
21 the contamination in the wells?

01:31PM

22 Q Were you informed by plaintiff's counsel in any
23 manner that the defendants were arguing that Whittaker could
24 not be the source of contamination in plaintiff's groundwater
25 wells because we did not use TCE?

1 A Counsel did not in any way, shape, or form relate
2 that argument to me.

3 Q Were you aware of that?

4 A Aware -- no. I'm not aware of it now.

01:31PM

5 Q Okay. All right. Let's go back to Mr. Zoch. If
6 you can turn to page -- first of all, who is Mr. Zoch?

7 A Mr. Zoch I do not know personally, but he's a
8 professional engineer -- I can tell by the title in his
9 report -- who was an expert on behalf of certain insurance

01:32PM

10 companies in litigation of Steadfast Insurance as subrogee or
11 -gee, however you pronounce that, of Whittaker Corporation in a
12 suit against the United States of America.

13 Q All right. And, sir, you favorably relied on
14 Mr. Zoch in your report, at least in one instance, to
15 contradict the opinion of Whittaker's expert; correct?

01:32PM

16 A Like I've said with many documents, I considered
17 the documents by themselves and with the other documentation
18 that I had and reviewed and rendered my opinions on that basis.

19 Q Well, the question is, if you look at your
20 rebuttal report which is Exhibit 1306 on page 2, don't you cite
21 Mr. Zoch as a basis for contradicting the opinion of
22 Whittaker's expert?

01:33PM

23 A I think I see where you're referring to. I will
24 just read the -- it's part of the paragraph.

01:34PM

25 Q Please don't read it. The question is didn't you

1 rely on Mr. Zoch as a basis to contradict a statement made by
2 Whittaker's expert?

3 A I used Mr. Zoch's report and my experience at
4 quite a few sites where there was a transition from TCE to PCE
01:34PM 5 and TCA as a basis for the statements made in that paragraph.

6 Q That's fine. Now, I want you to go back to
7 Mr. Zoch's report and go to page 20 of the report. Tell me
8 when you're there. Section 4.4.3?

9 A I'm there.

01:34PM 10 Q All right. Now, the first couple -- the title of
11 the section is "Disposal of drum perchlorate waste."

12 Correct?

13 A Yes.

14 Q And doesn't Mr. Zoch conclude that under the
01:35PM 15 terms of Bermite's contracts referencing the government's
16 ordinance safety manual, perchlorate waste as well as other
17 explosives and munitions production waste were required to be
18 destroyed by burning?

19 Doesn't it say that?

01:35PM 20 A It does say that.

21 Q Do you have any reason to believe that the
22 opinion of Mr. Zoch, which you considered, is incorrect?

23 A I have not seen the contracts that he's referring
24 to or the ordinance safety manual that he's referring to. So I
01:35PM 25 don't have a basis to agree or disagree.

1 Q Well, he saw and was able to review contracts
2 that you never saw; correct?

3 A He's referring to contracts, and I have not seen
4 any of the contracts.

01:35PM 5 Q But he saw contracts which you have not seen;
6 correct?

7 THE COURT: The Court is going to sustain its own
8 objection as lack of foundation. Please move on. It's also
9 argumentative.

01:36PM 10 Q BY MR. BLUM: Did Mr. Zoch in his report refer to
11 contracts that you have not seen?

12 A Mr. Zoch refers to a contract here. Contracts,
13 plural. And I have not seen contracts -- at least contracts
14 related to the materials being manufactured at the site.

01:36PM 15 Q All right. Mr. Zoch goes on to conclude, "A
16 destruction location was established at the site for this
17 purpose. In a remote area of the property referred to as the
18 Burn Valley, two burn pits were established in accordance with
19 minimum separation distance requirements, with the government
01:36PM 20 safety manuals, and waste explosives pyrotechnic materials, and
21 propellants were disposed of onsite by open burning."

22 MR. RICHARD: Your Honor, I hate to interrupt.
23 We are now reading from a hearsay document that is not in
24 evidence. I will object. Hearsay.

01:37PM 25 THE COURT: Sustained.

1 Q BY MR. BLUM: In relying on or considering
2 Mr. Zoch's opinion, didn't Mr. Zoch conclude that the
3 propellant, that perchlorate was burned in the burn area
4 consistent with government regulations and requirements?

01:37PM

5 A Mr. Zoch in this paragraph, he does describe the
6 burning -- the Burn Valley area where there were burn pits
7 where explosives and other wastes were burned.

8 Q Consistent with government requirements?

01:38PM

9 A He references contracts that reference
10 government's ordinance safety manual.

11 Q And he references that the burning took place
12 consistent with those contracts?

01:38PM

13 A Well, he doesn't use the term consistent with his
14 contract. That's what I'm looking at. "Under the terms of
15 Bermite's contracts referencing the government's ordinance
16 safety manual." And it goes on to describe the burning
17 process.

18 Q Okay. All right.

01:38PM

19 Now, in terms of the Burn Valley, that is one of
20 the major areas where contamination was found; correct?

21 A It is the area -- from the data that I reviewed,
22 the many, many thousands of pages of data I reviewed, the
23 highest concentrations of VOCs on the site.

01:39PM

24 Q And of those VOCs, isn't the overwhelming
25 majority TCE?

1 A I'm not even sure it's the majority. It is not
2 the overwhelming -- well, that's -- that would be something to
3 be subject to sample-to-sample, for example. I referenced a
4 specific sample in my report because of the extremely high
01:39PM 5 concentrations. In that particular sample, I'm not remembering
6 the exact numbers of TCE, maybe a majority, but it's not an
7 overwhelming majority.

8 Q Right.

9 A We could look at the other hundreds of samples
01:39PM 10 and see if it holds for those as well if you have the
11 documents.

12 Q Now, Dr. Hughto, were government inspectors at
13 the Whittaker site at the time Whittaker was performing under
14 these government contracts?

01:39PM 15 A It's my understanding that there were government
16 inspectors present at the facility at different points in time.

17 Q All right. And these inspectors, do you have
18 knowledge of what they did?

19 A I saw descriptions. I think it was at least in
01:40PM 20 some of the deposition testimony. They observed different
21 operations and reviewed materials during the manufacturing
22 process.

23 Q Did any of the depositions discuss the fact the
24 inspectors also were there, for instance, at the burnings at
01:40PM 25 the burn pit?

1 A I believe I did see testimony relate that they
2 did observe at least some of the burning.

3 Q By the way, the burning, wasn't that also done
4 under permits from the L.A. County Fire Department?

01:40PM

5 A It was.

6 Q And at some point, Whittaker lost their permits
7 or lost the ability to burn at the site; correct?

8 A That is true. I understand Bermite lost their
9 permit at a point.

01:41PM

10 Q Wasn't that the emergency that caused Whittaker
11 to have to store drums of used perchlorate at the Hula Bowl?

12 A I don't know that that's a fact.

13 Q Well, when you said there was an emergency, you
14 don't know what the emergency was; correct?

01:41PM

15 A No. The author of that document did not specify
16 what the emergency was. Just there's an emergency.

17 Q So when you said the emergency, that you found it
18 was unusual that there was an emergency because they had been
19 doing this a long time, that was sheer speculation on your
20 part, wasn't it?

01:41PM

21 A Well, I don't think I can answer the question
22 because I didn't say what you said I said.

23 Q Well, do you recall what you said?

24 THE COURT: Move on to your next question.

01:41PM

25 Q BY MR. BLUM: Sir, did you read any documents

1 that discuss the fact that, after the permit was removed to
2 burn, that Whittaker was having a very difficult time finding a
3 place for the lawful disposal of the perchlorate waste?

4 A Could you repeat the question?

01:42PM

5 Q Did you -- do you see any documents that discuss
6 that, after Whittaker could no longer burn the material in the
7 Burn Valley, that it was -- had to store the perchlorate waste
8 until it found a lawful spot to dispose of it?

01:42PM

9 A I believe I saw documentations to that effect. I
10 couldn't cite what the document was.

11 Q And Whittaker was able to dispose of some of it
12 at another military facility; correct?

13 A That's my understanding.

01:42PM

14 Q And Whittaker was also able to get a temporary
15 permit from the fire department and the South Coast Air Quality
16 Management Board to burn some of it; correct?

17 A I recall that they got a temporary permit. I'm
18 not sure the issuing agencies.

01:43PM

19 Q And the issue was not resolved until Whittaker
20 entered into a new agreement with the DOD, the Department of
21 Defense, so that it could dispose it at other locations;
22 correct?

23 A That I don't recall the details of.

01:43PM

24 Q All right. We're getting towards the end here.
25 Let me just quickly -- were degreasers used at the facility in

1 the 1940s and 1950s?

2 A I believe so.

3 Q And in World War II, wasn't TCE used as part of
4 the degreasing process?

01:43PM 5 A I believe it was.

6 Q And sumps --

7 A You said in World War II. You mean during
8 World War II?

9 Q During World War II. The answer is they were;
01:44PM 10 correct?

11 A It's my understanding that TCE was used as a
12 degreaser at a facility during World War II.

13 Q And, sir, as an environmental professional, is
14 the presence of a sump sort of a red flag as a place you would
01:44PM 15 check if you're doing an environmental assessment?

16 A As I discussed yesterday, doing site assessments,
17 I talked about looking for characteristics or parts of
18 operations that could result in contamination and those be
19 further investigated. A sump, generally speaking, would be one
01:44PM 20 of those. Depends on the use of a sump, what it's there for
21 and what it does.

22 Q How about sumps in relation to degreasers?

23 A If I were conducting an investigation -- site
24 assessment investigation, if I saw a sump related to a
01:44PM 25 degreaser, I would want to have further investigation

1 undertaken.

2 Q Now, sumps are -- a lot of times they're made of
3 concrete; correct?

4 A They're many different types of materials. Some
01:45PM 5 are concrete. Some are open holes. Some are plastic.
6 Different materials.

7 Q If we take concrete, concrete is really not a
8 barrier to the VOCs, is it?

9 A It's not a complete barrier to VOCs.

01:45PM 10 Q Certainly dirt isn't.

11 A The degree to which dirt is a barrier depends on
12 the characteristics of the dirt.

13 Q Were there sumps at the facility in 1962 or
14 before?

01:45PM 15 A I'm trying to recall when the 317 and 342 area
16 sumps were constructed, and I'm just not recalling as I sit
17 here.

18 Q All right. Let's talk about Whittaker's --
19 Whittaker and groundwater monitoring.

01:46PM 20 Under their interim status permit, was
21 groundwater monitoring required?

22 A I don't believe that it was. It was required by
23 the regulations, but I don't believe it was specified in that
24 document.

01:46PM 25 MR. BLUM: All right. I'm sorry, Your Honor. I

1 just need to find something. If we can have Exhibit 1427,
2 please.

3 (Marked for identification and received
4 into evidence Exhibit No. 1427.)

01:46PM 5 Q BY MR. BLUM: This is the regional board document
6 we discussed earlier. Again, if you can go to page 2.

7 A I don't believe I have a copy, so I will use the
8 screen.

9 Q Okay. Now, were you aware that a closure plan
01:47PM 10 for service impoundments was submitted by Whittaker to the
11 Department of Health Services in September of 1983?

12 A I am aware of that.

13 Q And by the way, DOHS, that's the predecessor of
14 the Department of Toxic Substances Control; correct?

01:47PM 15 A I'm not certain of that.

16 Q Do you have any reason to --

17 A The agencies change their names.

18 Q Do you have any reason to believe it's not true?

19 A I do not have a basis to believe it's not true.

01:47PM 20 Q Okay. And the next sentence talks about soil
21 test results from samples obtained from below the surface
22 impoundment showed no --

23 A I'm sorry. I'm not seeing where you're reading
24 from.

01:47PM 25 Q Right -- the sentence after they talk about the

1 closure plan.

2 A What paragraph are you in? Last paragraph?

3 Q See where the soil test results?

4 A On the third line there?

01:48PM

5 Q Yeah.

6 A I see it.

7 Q Okay. Did you ever see those soil test results?

8 A I can't say, as I sit here, whether I've seen
9 them or not. I have seen mention of them, but I just don't

01:48PM

10 recall. This work that was done here, this closure type work
11 was done without an approved closure plan, going back and forth
12 with the agencies about closure plan and the inadequacy of
13 monitoring. So I do not recall the specific sample results.

14 THE COURT: The jury is to disregard everything
01:48PM 15 after "I can't say, as I sit here."

16 Q BY MR. BLUM: If you don't know -- if you don't
17 remember you've seen them, does that mean they don't exist?

18 A If I have not seen something, that doesn't mean
19 it doesn't exist.

01:49PM

20 Q All right. According to the regional board,
21 didn't they conclude that no groundwater monitoring system at
22 the facility is required for current ISD compliance?

23 A Could I take a look at the whole document? I'm
24 recalling something about this document that further explains
01:49PM 25 the sentence that you have isolated.

1 Q Okay. If you give us a moment, we will get you
2 the document.

3 MR. BLUM: May Mr. Fryer approach, Your Honor?

4 THE COURT: Yes.

01:51PM 5 Q BY MR. BLUM: Do you have it before you now, sir?

6 A I do. The question?

7 Q Didn't the Regional Water Quality Control Board
8 conclude in 1985 that no groundwater or monitoring system at
9 the facility is required for current ISD compliance?

01:51PM 10 A That sentence -- you have read that sentence.
11 The reason I asked for the entire document, there's a form at
12 the end of the document that --

13 MR. BLUM: Your Honor --

14 THE WITNESS: -- that is part of the basis for
01:52PM 15 it.

16 THE COURT: If you can answer the question yes or
17 no. If you can't, say I can't answer it yes or no.

18 THE WITNESS: Well, the sentence you read is on
19 the page.

01:52PM 20 Q BY MR. BLUM: Do you have any reason to believe
21 that that is not what -- never mind.

22 Now, didn't they go on to talk about the fact
23 that they had sampled a well onsite?

24 A Do you want me to go from memory or pull it up?

01:52PM 25 Q You can go to just below that, a recent water

1 analysis.

2 THE COURT: The question is did they go on to
3 state that they did well sampling analysis or that they had
4 sampled a well onsite?

01:53PM

5 THE WITNESS: (Witness reviewing document.)

6 The highlighted sentence and the sentence above
7 it do describe there was a sample collected from production
8 well property.

01:53PM

9 Q BY MR. BLUM: And, finally, didn't the report
10 conclude that, based on all the data, that the board wanted
11 additional sampling; correct? That's the next page.

01:54PM

12 A The board -- it's recommended that groundwater
13 from the facility's production well -- I'm assuming it's the
14 production well referenced on the previous page -- should be
15 analyzed for more parameters.

16 Q And isn't this the basis on which the 1985 result
17 that found VOCs in the production wells, isn't this the
18 evolution of that?

01:54PM

19 A Subsequent sampling in 1985 did show that there
20 were organics in that production well.

21 Q And it was sampling done by the Regional Water
22 Quality Control Board; correct?

23 A I believe that it was.

01:54PM

24 Q And after that, wasn't there then discussions
25 between EPA and Whittaker in which there was an agreed order

1 entered into that would deal with the monitoring wells?

2 A There was an order in 1986, I believe was the
3 timing, that dealt with -- in part dealt with the monitoring
4 wells.

01:55PM 5 Q And now, in terms of the monitoring wells, is it
6 important to understand with -- I guess it's called the
7 geophysical conditions of the aquifers before you place a
8 monitoring well?

9 A What geophysical characteristics are you talking
01:55PM 10 about?

11 Q Well, you have to know which way groundwater
12 flows, don't you?

13 A That is more hydrology than geophysics. The
14 geophysics threw me.

01:55PM 15 Q But you need to know information about where the
16 groundwater, where the aquifers are, what is the direction, and
17 geophysical conditions like that; correct?

18 A Again, those -- I wouldn't call those geophysical
19 conditions. But the -- when you place a monitoring well,
01:56PM 20 you're placing it for a purpose. And the purpose varies one
21 well to the next. It is helpful to know which way groundwater
22 flows. It's helpful to know the soil characteristics at
23 different depths. However, if you haven't put a well in yet,
24 this is your first well, you don't know those things
01:56PM 25 necessarily. So you're putting the well in in part to

1 determine those things, and then you can use that information
2 when you put in subsequent wells. That's why you put in more
3 than one.

01:56PM 4 Q Didn't it, in the agreement with EPA, didn't EPA
5 state that the priority should be -- for Whittaker should be on
6 placing wells to determine the geophysical characteristics
7 rather than actually monitoring for VOCs?

8 A I don't have that document committed to memory.

01:57PM 9 Q All right. If you can go to Exhibit 221 which is
10 in as stipulated.

11 (Marked for identification and received
12 into evidence Exhibit No. 221.)

13 Q BY MR. BLUM: Do you recall seeing this document,
14 sir?

01:57PM 15 A I have seen that document.

16 Q All right. And what is it?

01:57PM 17 A It is a consent agreement and final order,
18 Whittaker Corporation-Bermite division. It is written by the
19 USEPA, and it is addressed to Mr. Louttit at
20 Whittaker Corporation.

21 Q This is basically the cover letter that attaches
22 the consent agreement; right?

23 A The consent agreement, yes.

01:57PM 24 Q And if you can go to page 3, the first full
25 paragraph starts out about the hydrogeologic assessment.

1 A The first three words are the hydrogeologic
2 assessment.

3 Q What is a hydrogeologic assessment?

01:58PM 4 A It is an assessment of the conditions that relate
5 to groundwater flow.

6 Q And didn't the EPA want Whittaker to do a
7 hydrogeologic assessment before designing a monitoring plan?

8 A Was that in this paragraph?

9 Q If you could --

01:58PM 10 A Hydrogeologic assessment is part of a monitoring
11 plan.

12 Q Can you go to the next paragraph, please, where
13 it says, "We recognize"? Do you see that, sir? "We recognize
14 that the groundwater monitoring plan will be preliminary in
01:58PM 15 nature until the results of the hydrogeologic assessment are
16 done. At that time a more detailed groundwater monitoring
17 program will be designed. Since these investigations are more
18 often an iterative process, it is appropriate to submit general
19 information at this time on well design and development."

01:59PM 20 A Except for a few words, that's what's on the
21 page.

22 Q So EPA wanted Whittaker to focus on designing the
23 hydrogeologic conditions and then prepare a comprehensive
24 monitoring plan; correct?

01:59PM 25 A It's all part of the same process here. It's an

1 iterative process. You begin by -- like I said, you apply
2 whatever information you have in the hydrogeologic assessment.
3 If you don't have any wells in the ground or you haven't done
4 any subsurface investigation, you use the information that you
01:59PM 5 have which could be called a hydrogeologic assessment, and then
6 you build from there in this iterative process into building a
7 plan for where you would put wells at what depth and other
8 characteristics of the next step in this iterative process.

9 Q So it's not like you start -- you don't start
02:00PM 10 with 200 wells, do you? You start with a few, and then you
11 build.

12 A For what?

13 Q To get a full monitoring program.

14 A You're just talking about in general?

02:00PM 15 Q Yes. In general.

16 A Like it says here, the -- these are -- the
17 hydrogeologic investigation for hydrogeology purposes, for
18 contaminant migration purposes is an iterative process that
19 builds. You collect some data. You learn, and you develop
02:00PM 20 more data to more fully understand.

21 Q All right. I've just got a couple more
22 questions. I have one on the Hula Bowl.

23 Were fireworks found in the Hula Bowl?

24 A I believe there was an observation of fireworks.

02:01PM 25 Q When were fireworks manufactured at the site?

1 A I don't recall the precise dates.

2 Q Weren't they manufactured prior to 1945?

3 A My recollection is that it was early in the
4 manufacturing process here. Whether it's before '45 or some
02:01PM 5 other year, I don't recall off the top of my head.

6 Q It was certainly before 1967, wasn't it?

7 A I believe that it was.

8 Q So let's go to the last issue, and I want to talk
9 about the -- what we have been calling solid waste management
02:01PM 10 units or SWMUs.

11 Now, the Whittaker site was divided into a number
12 of solid waste management units; correct?

13 A There were a number of solid waste management
14 units identified on the site.

02:01PM 15 Q All right. And -- I'm sorry. I'm just looking
16 for the exhibit. If you can pull up 486, please.

17 486, this is the consent order that you discussed
18 earlier with Mr. Richard; correct?

19 A Yes.

02:02PM 20 Q All right.

21 MR. RICHARD: Is this now going to be in
22 evidence?

23 MR. BLUM: Your Honor, it's in evidence except
24 for certain points that are -- my understanding, that's your
02:02PM 25 ruling yesterday.

1 THE COURT: In any event, it is now received.

2 MR. RICHARD: Thank you, Your Honor.

3 (Marked for identification and received
4 into evidence Exhibit No. 486.)

02:02PM 5 Q BY MR. BLUM: If you can go to 486.11. I'm
6 sorry.

7 This consent order, who was it entered into?
8 Between Whittaker and who?

9 A Could you go to the first page of it? That's a
02:03PM 10 cover letter. The first page of the order.

11 Q It's a Department of Toxic Substances Control;
12 correct?

13 A That's the author of the letter that's on the
14 screen.

02:03PM 15 Q Well, technically it's the people of California;
16 correct?

17 THE COURT: Go ahead and ask another question.

18 Q BY MR. BLUM: Sir, this was done, what, in 1994;
19 correct?

02:03PM 20 A This letter was written November 21, 1994.

21 Q And that's the date of the consent order;
22 correct?

23 A That's the date of this letter that I believe is
24 transmitting the consent order.

02:03PM 25 THE COURT: He doesn't have the document fully

1 before him. If you want to just go to the signature page, for
2 example, or wherever else that information might be found.

3 MR. BLUM: I will do that, Your Honor. Thank
4 you.

02:04PM 5 Q Page 486.46. What was the date of the signature?

6 A There are two signatures here. The chief of site
7 mitigation branch at the DTSC signed it on November 21 of 1994,
8 and Mr. Louttit of Whittaker signed it on November 15th of
9 1994.

02:04PM 10 Q All right. Now, if we can go back to page 11.
11 Do you see section 2.3.2.3?

12 A I see it.

13 Q Sir, is it correct that, as of the date of this
14 agreement, the closure plan has been implemented for all of the
02:05PM 15 hazardous waste management units?

16 A It says that.

17 Q Do you have any reason to believe that's not
18 true?

19 A I don't know which closure plan or which
02:05PM 20 hazardous waste management units are being discussed. So I
21 don't know whether the plan has been implemented or not.

22 Q Well, doesn't it say for all? So all of the
23 SWMUs there been a closure plan implemented.

24 A And I don't know if somewhere else in this
02:05PM 25 document it says this relates to only these solid waste

1 management units. I don't know what it refers to.

2 Q But this is a document, by the way, that you
3 considered; correct?

02:05PM 4 A By the way, it says hazardous waste management
5 units, not solid waste management units. It is a document
6 that --

7 Q Doesn't it go on to say that 13 of the 14 units
8 were certified closed by the department?

9 A It does say that.

02:06PM 10 Q What does "certified closed" mean?

11 A Usually there's a closure document that's
12 submitted to the government, and that document is -- would be
13 certified by a professional engineer or someone else authorized
14 to certify it. This says by the department. Often that's done
02:06PM 15 by the private sector, but apparently it says here somebody at
16 the department did it.

17 Q Doesn't that mean that the Department of
18 Substances Control were satisfied that, of the 14 hazardous
19 waste management units, 13 of them had been properly cleaned to
02:06PM 20 the satisfaction of the State of California?

21 A What it says is 13 of the 14 units were certified
22 closed by the department. It is my understanding that that is
23 the Department of Toxic Substances Control and, if true, that
24 they certified them as closed.

02:07PM 25 Q And does that mean there's nothing more to do on

1 them by Whittaker?

2 A There are -- I have had experience more than once
3 that something has been given a no further action letter or
4 been determined to be closed by a government agency and had
02:07PM 5 been reopened for one purpose or another. That is not
6 addressed in these few lines you gave me here, so I can't tell
7 you it means nothing else needs to be done. There could be
8 post-closure monitoring which is not unusual that, after
9 something is closed, that the groundwater has to be monitored
02:07PM 10 for some period of time in order to ensure that the closure was
11 effective. That could have been a condition.

12 Q Did you review any documents that said that
13 post-closure of these units, that they were ever reopened?

14 A I don't know what the 13 units are, so I can't
02:08PM 15 say one way or the other.

16 Q Last document -- and this is fast, and then we're
17 done -- is Exhibit 1 which is the ISE, the imminent and
18 substantial endangerment order.

19 (Marked for identification and received
02:08PM 20 into evidence Exhibit No. 1.)

21 Q BY MR. BLUM: Now, this is a document you have
22 also relied upon; correct?

23 A I have a leaky cup up here.

24 You asked if it is a document I considered?

02:08PM 25 Q Yes.

1 A It is.

2 Q Now, this document advises who the parties are;
3 correct?

4 A Yes.

02:09PM 5 Q All right. Now -- sorry.

6 Now, if you could take a look at Exhibit 1.4.

7 Tell me when you're there.

8 A It's page 4 of the document; correct?

9 Q Yes. And section 1.3 under status.

02:09PM 10 A I see that.

11 Q Does the document define who the current owner
12 and operator of the site was as of 2002?

13 THE COURT: You said 2002?

14 MR. BLUM: Yes, sir.

02:10PM 15 THE COURT: Thank you.

16 THE WITNESS: My answer is it does.

17 Q BY MR. BLUM: Who was it?

18 A It was Santa Clarita, LLC.

19 Q Okay. And this was the company that purchased
02:10PM 20 the property from Whittaker; correct?

21 A It says here that the -- it was sold. Whittaker
22 sold it to Santa Clarita, LLC.

23 Q Okay. So at the time in 2002, do you understand
24 what the status was of SCLLC?

02:10PM 25 A Status in what way?

1 Q Do you know whether or not they declared --
2 recently declared bankruptcy?

3 A I do not know whether they declared bankruptcy or
4 not.

02:10PM

5 Q Well, do you know whether or not the fact that
6 they couldn't keep cleaning up the site was the reason why the
7 ISE was issued to Whittaker?

02:11PM

8 A I don't know what the motivation of the
9 government was. I know Whittaker was a PRP. By selling the
10 property, they're still a PRP in my experience. I don't know
11 that the financial status of Santa Clarita, LLC, had anything
12 to do with why Whittaker became a party to this order.

13 Q So this -- so this order could have had nothing
14 to do with the failure of Whittaker to do anything; correct?

02:11PM

15 A I don't understand the question.

16 Q Well, you stated to the jury that the reason that
17 the order was significant to you is because it implied that
18 Whittaker wasn't following through with what they were
19 obligated to do at the site, didn't you?

02:11PM

20 A I didn't say those words.

21 Q But that was the gist of what you meant.

02:12PM

22 A I will tell you what I meant. There have been a
23 series of orders -- there was. I'm sorry. There was a series
24 of orders at the site including the one in the mid '90s that
25 had many of the same requirements as this one in '02. It was

1 pursuant to this one. And the one in '02, pursuant to that,
2 the work -- the RIFS and remediation work was conducted by
3 Whittaker and his consultants. Similar activities were
4 included in the order in the mid '90s but were not completed to
5 the degree -- completed pursuant to this order.

02:12PM

6 Q Dr. Hughto, did this order have to do with
7 Whittaker being out of compliance or SCLLC being out of
8 compliance?

9 A I believe I said a little while ago that my
10 experience in a situation like this, once a PRP, you're always
11 a PRP. The fact they sold the property, they still were owner
12 and operator for -- prior owner and operator and identified by
13 the government agencies as a PRP.

02:13PM

14 Q Can you go to page 6, section 2.2? About four
15 lines down starting "On or about January 25."

02:13PM

16 Isn't that correct, Dr. Hughto, that the reason
17 the litigation was initiated by the state that resulted in this
18 order was because SCLLC was out of compliance with the
19 February 14, 2001, enforceable agreement?

20 A It states in this highlighted section -- and I
21 haven't read any other context to it that -- the
22 Attorney General's Office noted -- notified SCLLC and the
23 respondent, who would be Whittaker, that because -- that
24 because Santa Clarita, LLC, was out of compliance with the
25 February 14, '01 enforceable agreement, the state would

02:14PM

02:14PM

1 institute litigation. And the --

2 Q Not because --

3 A It lists the things they were going to be looking
4 to recover in the litigation.

02:15PM 5 Q It wasn't because of anything Whittaker did. It
6 was because of SCLLC not being in compliance that this
7 agreement was entered into; correct?

8 A I wouldn't agree with that, and the reason is
9 that Whittaker is responsible for the waste being in the
02:15PM 10 ground. So the whole reason there is an agreement is because
11 there's waste in the ground. The part of the reason for this
12 agreement is that SCLLC wasn't -- was out of compliance, but
13 they were out of compliance because they were dealing with
14 someone else's contamination.

02:15PM 15 Q Sir, after the ISC -- didn't -- didn't Whittaker
16 after this agreement -- after the action against SCLLC was
17 instituted, step back in and finish remediating the site?

18 A You asked if Whittaker did?

19 Q Yes.

02:16PM 20 A I think I testified earlier that, after this
21 order, Whittaker brought in CDM Smith and did more thorough
22 investigations and remediation to the site.

23 Q And hasn't Whittaker received certain clean
24 closure orders or orders from the State that have allowed them
02:16PM 25 to cease a lot of the cleanup operations because they have been

1 completed as of today?

2 A I don't know if they're -- if they're -- you
3 called them orders? Clean closure orders? Required no further
4 action orders?

02:16PM

5 Q Let me rephrase it.

6 Hasn't Whittaker received notifications from DTSC
7 that they believed that much of the remediation onsite has been
8 completed to the State of California's satisfaction?

02:17PM

9 A They have received notifications that they have
10 completed certain aspects of the remediation.

11 MR. BLUM: Thank you.

12 THE WITNESS: You're welcome. Thank you.

13 THE COURT: Redirect?

14 MR. RICHARD: Just a bit, Your Honor. Thank you.

02:17PM

15 **REDIRECT EXAMINATION**

16 BY MR. RICHARD:

17 Q I'd like to begin by going back to Exhibit 1427,
18 this document from 1985. This is --

19 A It's just coming up on the screen?

02:18PM

20 Q Yes.

21 Can we go ahead and put that up on the screen?
22 Do you have it?

23 A I have it on the screen, yes.

24 Q Great. You were asked -- this is the document
02:18PM 25 from the California Regional Water Control Board -- Water

1 Quality Control Board in 1985 that counsel just asked you about
2 in connection with groundwater monitoring. And the phrase he
3 used was, after the board had reviewed all of the data, and I
4 sensed you wanted to say something about the last page, the
02:18PM 5 appendix. So can you turn to the last page, Appendix A-1 of
6 this exhibit?

7 Do you have that there?

8 A Yes.

9 Q There's a reference to, right in the middle, type
02:19PM 10 of facility. Do you see a reference to surface impoundment,
11 landfill, and the rest?

12 A I do.

13 Q My question is nothing from the Regional Water
14 Quality Control Board refers to the fact that Whittaker knew
02:19PM 15 that its surface impoundment at Building 317 had leaks and
16 overflow problems three years earlier, does it?

17 A It does not.

18 Q And did you see any evidence at all, any
19 documents, that indicate that Whittaker ever shared with the
02:19PM 20 Regional Water Quality Control Board, the memo that it had,
21 that study from Mr. Bean three years earlier, describing the
22 problems at the impoundment?

23 A I've never seen documentation that the Bean memo
24 was provided to the regulatory agencies.

02:20PM 25 Q And that surface impoundment, that was closed

1 without the participation of Alan Sorsher and other folks at
2 DTSC; is that right?

3 A That's my understanding.

4 Q If we could just briefly look at Exhibit 25
02:20PM 5 again. This is the memo three years earlier where Whittaker
6 was discussing the need or possibility of groundwater
7 monitoring. Not to take you through all of it again, but this
8 is the memo that describes the overflow and the fact that the
9 impoundment was used for uses it wasn't originally intended for
02:21PM 10 and --

11 MR. BLUM: Objection, Your Honor. Counsel is
12 testifying.

13 MR. RICHARD: I will rephrase.

14 THE COURT: That's okay. I allowed you or you
02:21PM 15 did a lot of just reading from the documents. Especially given
16 the amount of time that we have left and for speed, I'm going
17 to allow you to summarize as to -- as opposed to asking whether
18 he relied upon it.

19 MR. RICHARD: Thank you.

02:21PM 20 Q Again, for each of these problems that Mr. Bean
21 went in through in some detail about the impoundment leaking
22 and overflowing and having hazardous waste water released, was
23 any of that information disclosed to the Regional Water Quality
24 Control Board before Whittaker closed that impoundment without
02:21PM 25 the participation or knowledge of the State?

1 THE COURT: Based on the information that you
2 had.

3 THE WITNESS: Not that I'm aware of from the
4 information I have received.

02:21PM

5 Q BY MR. RICHARD: And nothing in the exhibit that
6 Mr. Blum spent some time with you reviewing that letter from
7 the California Regional Water Quality Control Board in 1985
8 made any reference to either the Bean memo or the facts
9 regarding the problems with the sump in the Bean memo; is that

02:22PM

10 right?

11 A That's correct.

12 Q And one of the other topics we spent some time,
13 Mr. Blum asked you about, I think before our lunch break, had
14 to do with manifests for hazardous wastes.

02:22PM

15 Do you recall that discussion?

16 A I do.

17 Q And he talked about those would be done in
18 multiple copies and there could be tax ramifications and that
19 entire general discussion.

02:22PM

20 Do you recall that?

21 A I do.

22 Q And for manifest documentation, in your
23 experience, does it typically identify the identity of the
24 permitted entity that receives the hazardous waste?

02:22PM

25 A It identifies it and a representative of that

1 facility signs the form, the manifest form.

2 Q And is that important?

3 A It's important because it's a document that has
4 importance, and it is this whole cradle-to-grave concept. It
02:23PM 5 documents that the waste arrived at the facility where it was
6 supposed to have its, I'll call, final resting place.

7 Q And so this idea that somehow the manifest that
8 you haven't seen would tell us what happened, was Whittaker
9 ever cited for deficient documentation of its manifest?

02:23PM 10 A Yes, it was.

11 Q And do you have Exhibit 1381 handy, sir, this
12 citation from June 4th -- I don't think we can publish it yet.
13 June 4th, 1986.

14 A I do have it.

02:23PM 15 MR. RICHARD: Okay. Your Honor --

16 Q And if you could turn to Count 9. Can you tell
17 us, in general, what Count 9 refers to?

18 A There's a subtitle under the words "Count 9"
19 manifest. It describes how generators are -- requires
02:24PM 20 generators to designate on the manifest the name of the
21 facility which is to be permitted to handle the hazardous
22 waste. The second paragraph says that, "On or about
23 June 25th, 1985, during the inspection of the facility, the EPA
24 inspector observed the manifest and lists the numbers of five
02:24PM 25 manifests. Did not specify the name of the facility to be

1 permitted to handle the hazardous waste."

2 Q So when the EPA came and inspected Whittaker's
3 records and they looked at the manifest, the manifest did not
4 have the name -- and they list several manifests there -- did
02:25PM 5 not have the name of the facility to be permitted to handle the
6 hazardous waste?

7 A That's correct. That's what this says.

8 MR. RICHARD: Your Honor, we would move 1381 into
9 evidence.

02:25PM 10 THE COURT: Received.

11 (Marked for identification and received
12 into evidence Exhibit No. 1381.)

13 MR. RICHARD: Thank you. If we can pull up
14 Exhibit 445, the mystery memo.

02:25PM 15 Q You were asked a number of questions about
16 whether the various steps for a site investigation in 1987 were
17 generally appropriate. What I wanted to ask you is this is a
18 document that refers to hazardous waste in landfills at
19 Whittaker.

02:25PM 20 Do you recall that?

21 A I do.

22 Q Did Whittaker provide this to the EPA in this
23 memo or this information in 1987?

24 A My understanding is that it did not.

02:26PM 25 Q And if you could look at what is in evidence as,

1 I believe, Exhibit 501 from yesterday, you were just shown some
2 records regarding a Gordon Louttit. So we are looking at an
3 August 25th, 1988, letter that includes a certification under
4 penalty of perjury that the information is correct.

02:26PM

5 Do you see that at page 2 of Exhibit 501?

6 A I do.

7 Q So this is a letter from Whittaker signed by one
8 of its executives to the USEPA; is that correct?

9 A Yes.

02:27PM

10 Q The Environmental Protection Agency that you were
11 asked some questions about a few minutes ago. This is
12 documentation reports solid waste management units.

13 Do you see that at page 3 of the document?

14 A I don't have a hard copy here in front of me.

02:27PM

15 Q Can you go to page 3?

16 A Yes. The title is documentation report solid
17 waste management units.

18 Q Okay. Remind us, again, what is a solid waste
19 management unit?

02:27PM

20 A It is an area component of a site in which waste
21 was handled and/or managed.

22 Q Okay. So in response to questions from the
23 USEPA, Whittaker writes and identifies at the next page,
24 page 4, units which were present at the facility, and you see
02:28PM 25 landfill referenced as the first type of unit?

1 A I do.

2 Q Then there's a reference to attachment table 2.1.

3 Can you go to page 6 of the document? Do you
4 have page 6? There you go.

02:28PM 5 My question, sir, is did you see anywhere in this
6 document that Whittaker in 1988, over a year after the mystery
7 memo we talked about from June 1987, any reference that
8 Whittaker was telling the EPA about the hazardous substances in
9 its landfills?

02:28PM 10 A Are you talking about the hazardous substances
11 and hazardous wastes documented in the memo?

12 Q Yes, sir.

13 A I have not seen documentation that those -- that
14 that memo was provided to the agencies.

02:29PM 15 Q But here we do have a memo provided to the
16 agency, to the United States Environmental Protection Agency
17 from Whittaker under penalty of perjury; correct?

18 A Yes.

02:29PM 19 Q And here under the question of are materials
20 considered hazardous, the response was what?

21 A Demolition and general trash, wood, scrap metal,
22 plastic parts, paper scrap.

23 Q No discussion or disclosure in this particular
24 document to the United States EPA that, as identified in the
02:29PM 25 Whittaker memo that we talked about, the mystery memo, that not

1 only were there hazardous waste discovered in various land
2 fills but that their consultant was recommending further
3 investigation at that time. We don't see that in this
4 disclosure, do we?

02:30PM

5 A I do not see it here.

6 MR. RICHARD: So I think that's all I have.

7 Thank you so much, sir.

8 THE WITNESS: You're welcome.

9 THE COURT: Recross?

02:30PM

10 MR. BLUM: Yes, Your Honor.

11 **RECROSS-EXAMINATION**

12 BY MR. BLUM:

13 Q If we could -- the consent order or the complaint
14 from the regulators dealing with manifests, that was in 1986;
15 correct?

02:31PM

16 A You're talking about the document that
17 Mr. Patrick just asked me questions about?

18 Q Yeah. Pretty much at the beginning of the
19 redirect.

02:31PM

20 A Well, it's dated -- the cover letter is June 4th
21 of '86.

22 Q So the mystery memo deals with what will happen
23 in 1987; correct?

02:31PM

24 A Well, the mystery memo was dated in 1987. I
25 would have to look at it to see if it documented when those --

1 the excavations and the investigations of the landfills was
2 undertaken.

02:31PM 3 Q Okay. Now, were you aware that there was an
4 inspection done of the Whittaker site by the Department of
5 Health Services which was the predecessor to DTSC in 1988? I'm
6 sorry. 1989.

7 A I have seen documentation of different
8 inspections. I'm not remembering the dates. But I've seen
9 documentation of inspections.

02:32PM 10 MR. BLUM: Can you bring up Exhibit 225.1? I'm
11 sorry. 225.

12 THE COURT: Is this an agreed-upon document?

13 MR. BLUM: Yes, sir. Sorry, Your Honor. Yes, it
14 is.

02:32PM 15 (Marked for identification and received
16 into evidence Exhibit No. 225.)

17 Q BY MR. BLUM: This is something you also
18 considered in reaching your opinions, isn't it?

19 A Was there a question?

02:32PM 20 Q This is on your list of documents you reviewed;
21 correct?

22 A I believe it was. It is.

23 Q All right. If you can go to page -- I believe
24 it's .6 or the sixth page.

02:33PM 25 Now, didn't Whittaker provide for inspection to

1 the DTSC or the DOHS personnel manifest from 1986, 1987, and
2 1988?

3 A I see. It says the facility provided for review
4 the manifests for 1986, 1987, and 1988.

02:33PM 5 Q And they were found to be adequately maintained;
6 correct?

7 A That's correct. That says that.

8 Q And if the generator's name was not on the
9 manifest, they would not have been adequately maintained, would
02:33PM 10 they?

11 A Well, maintenance is different from completing
12 the form. You mentioned generator, and the earlier reference
13 to lack of a signature was not by a generator. It's by a
14 receiving facility.

02:34PM 15 Q Isn't -- the receiving facility isn't Whittaker,
16 is it? Whittaker would be the generator, wouldn't they?

17 A Yes.

18 Q All right. So I want to get some terms right so
19 the jury can understand it.

02:34PM 20 A lot of different people have to sign the
21 manifests; correct?

22 A I wouldn't call it a lot, but there's a chain of
23 people that have to execute the manifest depending on how many
24 people are in custody of the waste.

02:34PM 25 Q So the generator is the party that generates the

1 waste; correct?

2 A That's correct.

3 Q And waste from the Hula Bowl, that would have
4 been, assuming there was hazardous waste, that would have been
02:34PM 5 Whittaker; correct?

6 A What would have been Whittaker?

7 Q Whittaker would have been the generator since
8 they own the property on which the hazardous waste may have
9 been taken from; is that correct?

02:34PM 10 A Again, are you talking about the Hula Bowl?

11 Q Yes.

12 A If hazardous waste was taken from the Hula Bowl
13 and disposed offsite, it's my opinion that Whittaker would have
14 been the generator.

02:35PM 15 Q If they hire a transporter, the transporter has
16 to sign it also; correct?

17 A Correct.

18 Q And when they deposit it at the legal disposal
19 site, the party that receives it also has to sign it; is that
02:35PM 20 correct?

21 A That is correct.

22 Q And the signatures that were missing were from
23 the party that got the waste, not from Whittaker; correct?

24 MR. RICHARD: Objection. Misstates the document
02:35PM 25 and the testimony.

1 Q BY MR. BLUM: Is it your understanding that the
2 signatures that were missing were from the party that received
3 the waste rather than from the generator which would have been
4 Whittaker?

02:35PM

5 A It is my understanding is the missing signatures
6 that are cited in that document were of the receiving facility.

7 Q So Whittaker did what they needed to do. It was
8 somebody else who messed up?

02:35PM

9 A I can't tell you what Whittaker did. I can just
10 tell you what the document says. It was missing signatures
11 from the receiving facility.

12 Q Last thing. Can we go to Exhibit 501? This
13 was -- the date of the first page, this was in 1988; correct?

14 A The date is August 25th, 1988.

02:36PM

15 Q Eight years before the consent decree that we
16 discussed?

17 A Approximately.

18 Q All right. And doesn't this document talk about
19 the waste that was present at the time in -- that they knew
20 about in 1988?

02:36PM

21 A You're asking --

22 Q Well --

23 A What are you asking?

24 Q Go to page 501.6. When we talked about the

02:37PM

25 mystery -- 1987 memo, didn't it say in the memo that the wastes

1 that were hazardous were disposed of offsite?

2 A I believe there was reference to hazardous --
3 wastes determined to be hazardous waste were disposed offsite.

4 Q So in 1988, a year later, isn't that correct that
02:37PM 5 Whittaker could have properly and straightforwardly represented
6 that they -- that at the current time there was no hazardous
7 waste?

8 A I don't know that they had done a sufficient
9 investigation of what was left behind --

02:37PM 10 Q Do you know if they didn't?

11 A -- to determine that it was not. To answer your
12 question correctly, you would need to know what was left behind
13 after what they took away. My understanding of what was taken
14 away was material that was identified to be a hazardous waste.
02:38PM 15 That doesn't mean they left -- they didn't leave behind stuff
16 that was hazardous waste but they didn't identify it to be
17 such.

18 Q Or they didn't know it.

19 A They -- if they did what they said and they
02:38PM 20 removed everything they determined to be hazardous waste, they
21 didn't know what was -- they didn't know they left any
22 hazardous waste behind.

23 Q Sir, because you don't know the information, you
24 can't say to any reasonable scientific certainty that the
02:38PM 25 representations in 501 were not correct, can you?

1 A What's the 501?

2 Q Well, the description of materials were
3 demolition and general trash, wood, scrap, metal, plastic
4 parts, paper and scrap. You can't say that Whittaker at that
02:38PM 5 time knew there was anything but those things at the site, can
6 you?

7 A All I know from this document is what's written
8 here, and that's what someone put on the page for what was
9 observed.

02:38PM 10 Q And you can't testify that anything in here was
11 knowingly wrong -- stated as knowingly wrong by Whittaker, can
12 you?

13 A Further down the page it says -- under corrective
14 action, it says demolition materials, et cetera, have been
02:39PM 15 removed.

16 Q Is that wrong?

17 A I can't tell you. I just know that someone
18 stated that.

19 MR. BLUM: That's it.

02:39PM 20 MR. RICHARD: Your Honor, may I just have one
21 question?

22 THE COURT: Yes.

23 MR. RICHARD: Thank you, Your Honor.

24 ///

02:39PM 25 ///

FURTHER REDIRECT EXAMINATION

BY MR. RICHARD:

Q If we could go to page 2 of the mystery memo. Again, this is the memo you understand, even though it's dated 1987, wasn't provided to Mr. Sorsher until 1991; is that correct?

A That's my understanding.

Q And at the time that this memo was prepared, if you look at page 2, in terms of whether Whittaker had completed their investigation and removed hazardous substance -- all hazardous substances, do you see the reference right in the middle of the page, "The procedures tabulated information and results"? Do you see that paragraph?

A I do.

Q Can you read the second sentence of that paragraph?

A The known -- "The known investigated landfill sites have not been removed total" -- I'm sorry. Let me start again.

"The known investigated landfill sites that have not been removed total approximately 90,000 cubic yards."

Q And you understand that this memo described not only known landfill sites but other landfills that had not yet been investigated?

A That's correct.

1 Q Based on your review of the data of the amount of
2 hazardous material and waste removed after 2002, do you have an
3 opinion as to whether all hazardous waste had been removed as
4 of 1988?

02:40PM

5 A I don't think that that -- we could draw that
6 opinion because all the landfills hadn't been investigated yet.

7 Q In other words, were they -- was Whittaker still
8 removing hazardous substances from the site after 2002?

9 A That's correct.

02:41PM

10 Q And that's the stuff you told us about in the
11 CDM Smith reports?

12 A Yes.

13 MR. RICHARD: I think that's all I have,
14 Your Honor. Thank you very much.

02:41PM

15 MR. BLUM: Nothing, Your Honor.

16 THE COURT: You're excused. Please watch your
17 step going down.

18 Ladies and gentlemen, we have now concluded for
19 the day, and the good news is the weekend is upon you. So
20 please remember do not speak about the case, the people, or the
21 subject matter involved. Continue to keep an open mind, and
22 please do have a very nice and safe and healthy weekend.

02:41PM

23 Thank you.

24 (The following proceedings were held in

02:42PM

25 open court outside the presence of the jury:)

1 THE COURT: Please be seated. We remain on the
2 record outside the presence of the jury.

3 You are excused, doctor. Thank you.

4 I did want to just spend a few minutes -- one
02:42PM 5 moment, please. Let's try to make this fairly brief.

6 With regard to the bench trial, I did give you,
7 Mr. Blum, overnight to reflect and tell me what you have
8 concluded.

9 MR. BLUM: Your Honor, first, the challenge is to
02:43PM 10 use my imagination. The scenarios I was coming up with were
11 actually -- some of them were actually very far out.

12 THE COURT: Maybe it would be easier if you head
13 to the lectern given that that's a little bit higher and maybe
14 a little bit easier for you.

02:43PM 15 MR. BLUM: Your Honor, if the evidentiary rulings
16 you made stay the same, which I'm assuming we can talk about
17 other sources which we have and we're allowed to talk about
18 what was found at the turnouts, which we have, if those don't
19 change, the only witnesses that I would anticipate are the two
02:43PM 20 we have already discussed.

21 THE COURT: All right. And when is your witness
22 going to be available? I will speak with Mr. Richard in a
23 moment. But I would like to hear from them next week.

24 MR. BLUM: Then I will make sure they're
02:44PM 25 available next week, Your Honor.

1 THE COURT: All right. And remind me -- I'm not
2 recalling your witness off the top of my head.

3 MR. BLUM: Mr. Masard.

4 THE COURT: Thank you, Mr. Blum.

02:44PM 5 Let me hear from you, Mr. Richard. You had
6 mentioned that your witness had some health issues.

7 MR. RICHARD: Yes. He was in the hospital today
8 for a procedure. I haven't had the opportunity to see how it
9 went. Our anticipation, he would be available Monday. We
02:44PM 10 should be able to confirm that today or tomorrow and notify the
11 Court. That would be our expectation that he would be
12 available Monday.

13 THE COURT: All right. So you should plan on his
14 testifying on Monday, and then how much time are you
02:44PM 15 anticipating with him?

16 MR. RICHARD: I don't remember if we said an hour
17 or hour and a half.

18 MR. GEE: More like an hour and a half.

19 MR. RICHARD: More like an hour and a half.

02:44PM 20 THE COURT: That is for direct or everything?

21 MR. RICHARD: I really think that would be
22 everything because direct would be about an hour with him.

23 THE COURT: Do you have a sense as to how much
24 time you will need on cross-examination, Mr. Blum?

02:45PM 25 MR. BLUM: Your Honor, there's not much. I would

1 say a half hour would be more than adequate unless he goes to a
2 place I don't anticipate.

3 THE COURT: All right. Then why don't we just
4 have -- we will just have him on Monday, and then we can have
02:45PM 5 the defense witness on Tuesday.

6 MR. BLUM: I will talk to Mr. Mesard, and I will
7 do -- I will make sure he is available on Tuesday.

8 THE COURT: All right. And anticipate that we
9 will start up at 2:30. We may need a break, but figure they
02:45PM 10 need to be here at 2:30.

11 All right. And one last item and that has to do
12 with the Court's procedure for disclosing witnesses and
13 exhibits for those witnesses, particularly the challenged
14 exhibits.

02:46PM 15 I believe I -- that we have -- or I have been
16 advised that we only have through Monday. We have Trudell,
17 Stanin. I know we have, I believe, the video testimony that is
18 going to occur. And then I have M-a-n-s-a-d-a. So tell me,
19 Mr. Richard, what witnesses do I have and through when? I told
02:46PM 20 you what I think we have, and -- but I also want you to confirm
21 that and also tell me whether that's only through Monday.

22 MR. RICHARD: I would be shocked if we got
23 through Ms. Stanin, Dr. Trudell, our Peloquin video. That's
24 probably going to take most of Monday and Tuesday, Your Honor.

02:47PM 25 We have identified the ten exhibits. I don't believe any of

1 those are in dispute. There's a little bit of slippage for the
2 meet and confer, frankly. So we have identified the exhibits
3 we expect to use with Dr. Najm. I haven't had a chance to
4 check my e-mail for further meet and confer on that. I would
02:47PM 5 expect Dr. Najm to go Tuesday or Wednesday would be my best
6 estimate.

7 THE COURT: I'm just going to remind the parties
8 of the procedure that I set up and the potential consequences
9 for the failure to satisfy it.

02:47PM 10 My interest and concern is to make sure that I
11 have a day to actually look at whatever the disputes are so
12 that I can then speak with you the following day, and the
13 following day typically is going to be in the afternoon because
14 I don't have much time in the morning.

02:47PM 15 So if that procedure is not being satisfied, what
16 the parties can expect is one of two things. Either exclusion
17 or more likely, if this is a lesser way of handling it, that
18 you simply won't be able to either call the witness or use the
19 exhibits that are challenged. Perhaps just the latter.

02:48PM 20 And I'm not going to -- I do not want to be
21 placed in a position where I'm being pressed in the last minute
22 to have to make decisions because the parties are sending me
23 something early in the morning. That happens, but it really
24 shouldn't happen in this case. This case has been around for a
02:48PM 25 while, and I have set up a procedure that I think is fairly

1 designed to avoid it. So that's going to be the last I will
2 say on that, and I think that is the only -- or the last item
3 that the Court wanted to address this afternoon.

02:48PM 4 So unless there is anything further from either
5 side, we will recess for the day on this matter.

6 MR. BLUM: Your Honor, there was also
7 Mr. Lardiere who is on that list. That's another witness.

8 THE COURT: All right. Mr. Lardiere I do have,
9 and that has been resolved.

02:49PM 10 Is there anything further we need to address?

11 MR. RICHARD: My colleague wishes to address the
12 Court, Your Honor.

13 THE COURT: Mr. Gee?

02:49PM 14 MR. GEE: While we're on the record, when I was
15 presenting the testimony of Mr. Abercrombie, I didn't --
16 Exhibit 497 was stipulated, published, and entered, but I did
17 not provide the Court with the name of the exhibit which is the
18 water supply portfolio graphic.

19 THE COURT: Very well. Thank you.

02:49PM 20 Anything else for the plaintiff before I ask
21 Mr. Blum and we conclude?

22 MR. RICHARD: What a great high note to end on.
23 No, Your Honor. Thank you.

24 THE COURT: All right. Mr. Blum?

02:49PM 25 MR. BLUM: No, sir.

1 THE COURT: Then we are in recess. Have a good
2 weekend, everyone. Everyone is ordered back here at
3 8:00 o'clock on Monday.

4 MR. BLUM: Thank you, Your Honor.

02:50PM

5 (Proceedings concluded at 2:50 p.m.)
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DATED THIS 20TH DAY OF NOVEMBER, 2021.

/S/ MIRANDA ALGORRI

MIRANDA ALGORRI, CSR NO. 12743, CRR
FEDERAL OFFICIAL COURT REPORTER

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